IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.2467 of 2005
Date of Decision : September 05, 2006.

Chuhar Singh ..... Petitioner

Vs.

Manjit Kaur ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Ravinder Jain, Advocate
for Mr.G.S.Bhatia, Advocate
for the petitioner.

Mr.Sumeet Mahajan, Advocate
for the respondent.

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P.S.Patwalia, J. (Oral) :

The present petition has been filed against the order dated 29.03.2005 vide which an application filed by the petitioner, defendant in the suit, for permission to file written statement, was dismissed.

The suit has been filed by Manjit Kaur who is the respondent in this civil revision. The defendant in the suit is Chuhar Singh, the petitioner in the present revision petition. The parties are husband and wife. The claim in the suit is for recovery of Rs.1.20 lacs as *chakota* for the land

which is subject matter of the suit for the years 1996-97, 1997-98 and 1998-99 on the basis of an agreement dated 2.1.1986. When notice of the suit was served on the defendant he firstly filed an application under Section 10 of the Code of Civil Procedure with a prayer that the proceedings in the suit should be stayed as the plaintiff Manjit Kaur had already filed an earlier suit for permanent injunction restraining the defendant from disposing of and alienating the property in any manner and also sought recovery of Rs.74,800/- as *chakota* amount for the years 1993-94 and 1994-95. Earlier suit was also filed on the strength of agreement dated 2.1.1986. The application filed under Section 10 was however dismissed by the trial court. The defendant then filed a revision petition against the said order in this Court.

It is on account of the aforementioned facts that the defendant could not file the written statement in the present suit. On 28.11.2003 he filed an application seeking permission to file written statement taking a plea that in fact he was a layman and has engaged a counsel who advised him not to file the written statement till the decision of the revision petition in the High Court. It was on that account that written statement in the present suit could not be filed. He therefore prayed for permission to file written statement. The said application was however dismissed on the very date it was filed i.e. on 28.11.2003. Resultantly the defence of the defendant, petitioner in the present revision petition, was also struck off.

Aggrieved against the said order the defendant filed yet another application narrating all the aforementioned facts and circumstances in detail praying for recalling of the order dated 21.2.2004 and requested for permission to file a written statement. The said application however has

also been dismissed vide order dated 29.3.2005. The present revision petition has therefore been filed assailing the order dated 29.3.2005 and with a further prayer that the petitioner be allowed to file a written statement and lead his defence in the suit.

Learned counsel for the petitioner argues that written statement could not be filed on account of the fact that the revision petition against the order rejecting the application under Section 10 of the Code of Civil Procedure was pending in the High Court. In fact the written statement was not filed only due to the advice given by the counsel to the defendant. He submits that the defendant should not be penalised as he is a layman and relied upon the advice given by the counsel. He further argues that the present application has been dismissed by the trial court relying upon certain judgments rendered in the year 1991 that a period of 90 days for filing written statement is mandatory. He however submits that now the Hon'ble Supreme Court in the case of *Salem Advocate Bar Association, Tamil Nadu vs. Union of India* reported as *AIR 2005 SC 3353* has categorically held that in certain circumstances the period of 90 days for filing of the written statement can be extended by the courts and is not mandatory. The relevant observations are as hereunder :-

> *"....Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement can not be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the*

legislature has fixed the upper time limit of 90 days."

Mr. Mahajan, on the other hand contends that in this case the suit was filed in October 1999. The application for permission to file written statement was filed in November 2003. It should therefore not be granted after such an inordinate delay.

After hearing learned counsel for the parties I find that this is no doubt true that applicant was seeking permission to file written statement after an inordinate delay. At the same time I also find that the claim for recovery of *chakota* in the present suit is for the period 1996-97, 1997-98 and 1998-99 whereas in the earlier suit she had asked for recovery of *chakota* for the preceding years 1993-94 and 1994-95. Therefore there is some justification in the respondent seeking to make efforts to get the proceedings in this suit stayed as both the suits proceed on the basis of the same agreement dated 2.1.1986. Still further I find justification in the stand taken by the respondent that it was only on the advice of the counsel that he could not file reply and rather waited for finalisation of the proceedings in this Court.

I am therefore of the opinion that in the facts and circumstances of this case the defendant should be permitted to file reply to the suit and defend the same. The order of the trial court dated 29.3.2005 is set aside. The defendant, petitioner in this revision petition, would now be given an opportunity to file written statement on the next date fixed before the trial court and the proceedings in the suit would thereafter commence from that stage onwards.

Mr.Mahajan, learned counsel for the respondent submits that suit is of the year 1999. It is only account of non filing of the written

statement that the proceedings in the suit have been delayed for such a long period. He therefore prays that some appropriate direction be given to the trial court to expedite the hearing of the suit. After considering the statement of the learned counsel, I order that the trial court shall make all efforts to dispose of the present suit as expeditiously as possible.

September 05, 2006 (P.S.Patwalia)
monika Judge